



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 175597

PRELIMINARY RECITALS

Pursuant to a petition filed on July 15, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services regarding FoodShare benefits (FS), a hearing was held on August 10, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$719 from the Petitioner for the period of September 1, 2015 – February 29, 2016.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On March 3, 2015, the Petitioner submitted an application for FS benefits. She reported a household size of one. She reported her employment with [REDACTED], working 28 hours/week at \$9.50/hour. She reported rent expense of \$671/month and she reported that she pay utility expenses. On March 17, 2015, the Petitioner submitted her last 30 days of pay statements.
3. On March 20, 2015, the agency issued a Notice of Decision to the Petitioner. The notice informed the Petitioner that she would receive \$14 in FS benefits for March, 2015 and \$16 effective April 1, 2015. The notice informed her that this was based on gross monthly earned income of \$1,553.63, rent expense of \$671 and utility expenses. The notice also stated: "Because your total income exceeds 130% FPL for your FoodShare group size and you remain eligible, you do not have to report any changes until your next review or six month report form."
4. On June 9, 2015, the agency received employment and income verification for the Petitioner from [REDACTED]. The agency updated the Petitioner's case with the information.
5. On June 10, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would increase to \$128/month effective July 1, 2015. The notice informed her that this was based on gross monthly income of \$1,077.97, rent expense of \$671 and utility expenses. The notice also informed her of the requirement to report to the agency by the 10th day of the next month if her gross monthly income exceeded \$1,265.
6. On or about July 28, 2015, the Petitioner submitted a Six Month Report Form. No changes in income were reported.
7. On or about October 30, 2015, the agency received a wage discrepancy alert.
8. On or about June 29, 2016, the agency received an earnings verification for the Petitioner from [REDACTED]. The employer reported the Petitioner earned the following gross wages:

December, 2015	\$2,070.27
January, 2016	\$1,420.42
February, 2016	\$1,255.42
9. On or about June 29, 2016, the agency received an earnings verification for the Petitioner from [REDACTED]. The employer reported the Petitioner earned the following gross wages:

July, 2015	\$1,002.76
August, 2015	\$1,367.14
September, 2015	\$1,810.22
October, 2015	\$1,422.52
November, 2015	\$1,422.52
December, 2015	\$2,208.61
January, 2016	\$1,422.52
February, 2016	\$1,422.52
10. Total gross household income for the relevant period was:
11. On July 8, 2016, the agency issued a Notice of FS Overissuance and worksheet to the Petitioner informing her that the agency intends to recover an overissuance of FS benefits in the amount of \$719 for the period of September 1, 2015 – February 29, 2016 due to an unintentional client error.

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. §273.18(b), see also FoodShare Wisconsin Handbook (FSH), §7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. §273.18(b); see also FSH, §7.3.1.9. However, overpayments due to agency error may only be recovered for up to 12 months prior to discovery. FSH, §7.3.2.1. Overpayments due to client error may be recovered for up to six years after discovery. *Id.*

In this case, the Petitioner testified that she was unaware of the requirement to report to the agency if her income increased. She believed that she was only required to report changes at her six month review. The Petitioner also questioned how the agency considered retroactive pay.

When the Petitioner initially received FS benefits in March, 2015, her gross monthly income was over 130% of the federal poverty level (FPL). Therefore, she was not required to report any increase in income to the agency until the six month review. However, at the time of the six month review, her income had dropped below 130% FPL and she was then required to report if her gross monthly income exceeded 130% FPL. The notice of June 20, 2015 advised her of this requirement to report if her gross monthly income exceeded \$1,265 and she was required to report that increase to the agency by the 10th day of the next month.

The income verification from the Petitioner’s employers demonstrate that she exceeded the reporting requirement in August, 2015 when her gross wages were \$1,367.14. She was required to report this to the agency by September 10, 2015 and it would have impacted her benefits beginning October 1, 2015.

At the hearing, the agency conceded it erred in establishing the overpayment period as beginning September 1, 2015 instead of October 1, 2015.

I reviewed the agency’s calculations for the overpayment. With the exception of September, 2015 which should not have been included in the overpayment calculation, I find no errors in the agency’s calculation. For the period of October 1, 2015 – February 29, 2016, the Petitioner received an overissuance of \$607. The matter will be remanded to the agency to revise the overpayment period and amount of the overpayment. The agency is authorized to collect that revised overpayment from the Petitioner.

CONCLUSIONS OF LAW

The agency is authorized to recover an overissuance of FS benefits in the amount of \$607 from the Petitioner for the period of October 1, 2015 – February 29, 2016. The agency may not recover an overissuance of \$112 from the Petitioner for the month of September, 2015.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to revise the overpayment period for Claim # [REDACTED] to October 1, 2015 – February 29, 2016 and revise the amount of the overpayment for that Claim to \$607. In all other respects, the Petitioner’s appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 2nd day of September, 2016

\s _____
Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 2, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability